IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 356 (S/B) of 2004

Sunil Kumar Chaudhary S/o Sri R.N. Chaudhary,
R/o Village Chawani, P.S. Padrauna, Distt. Kushinagar
..... Petitioner

Versus

State of Uttaranchal through Secretary Departmetn of Personnel Affairs, Dehradun, Uttaranchal

..... Respondents

Sri P.M.N. Singh, Senior Advocate assisted by Ms. Prabha Nauliyal, ld. counsel for the petitioner.
Sri K.P. Upadhyaya, learned standing counsel for the respondents.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: March 29, 2006

By means of this writ petition, the petitioner has prayed for writ of mandamus commanding the respondent to relieve the petitioner for the State of Uttar Pradesh.

2. The petitioner is a P.C.S. Officer appointed on 24.11.2000 in Provincial Civil Services in the State of Uttar Pradesh and vide order dated 11.01.2001, he was sent on deputation to serve the State of Uttaranchal. He petitioner joined after being relieved on 19.1.2001 and subsequently he joined on 31.1.2001 at District Pithoragarh. This deputation was made by the State of U.P. in view of the shortage of the Class-I Magistrates and other Class-I Officers in Uttaranchal after its creation.

3. A counter affidavit has been filed in which it has been stated that the petitioner while posted as Deputy Collector, Vikasnagar, District Dehradun was

caught red handed while taking bribe by State Vigilance Establishment on a complaint of one Sri Amit Agarwal and an F.I.R. under the provisions of Prevention of Corruption Act has been lodged against him and he has been sent to Jail. Thereafter, vide Government Order dated 29.5.2004, the petitioner was suspended and he was attached to the office of District Magistrate, Dehradun. Thereafter, the petitioner filed a Habeas Corpus W.P. No. 10/2004 on 20.9.2004. As criminal investigation and prosecution is pending here against the petitioner, therefore, it has been stated that the petitioner could not be relieved for the State of Uttar Pradesh.

4. The petitioner by way of filing the writ petition has made an attempt to get rid of the criminal prosecution and sole object is to frustrate the criminal trial in Uttaranchal. The relieving of the petitioner from Uttaranchal was subject to the decision of the writ petition and was provisional one. From a perusal of the order of deputation, it is clear that petitioner was on deputation till the newly direct or promotee officers available to replace him. Therefore, by this order, the right/discretion vests with the State of Uttaranchal to relieve the petitioner. Since the petitioner had committed an offence for which a criminal investigation and prosecution is to be launched and in which a charge sheet has been submitted, the petitioner cannot seek a writ of mandamus for getting himself relieved for the State of Uttar Pradesh in order to frustrate the criminal trial.

5. The petitioner has not come up with clean hands, as he has not disclosed in the writ petition regarding the pendency of the criminal trial. The

averments made in the Para 7 and 9 are reproduced hereunder:-

> **7. That one Lakshmi Shankar who was posted as Dy. Collector, Rudrapur, Distt. U.S. Nagar and was also covered by order dated 29.4.2003 and against whom a case under the Prevention of Corruption Act was registered in Uttaranchal was also relieved for State of U.P. The petitioner's case if fully identical and similar to that of Lakshmi Shankar Singh and not relieving him for State of U.P. is an arbitrary omission to exercise powers by State of Uttaranchal.**
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> **9. That mere pendency of a Criminal Trial under the Prevention of Corruption Act cannot be a valid ground to retain the petitioner as the Special Judge has ample power to secure the attendance of the petitioner who is on bail for the purposes of trial.**

6. In the aforesaid paragraphs, the petitioner has raised a point that the petitioner cannot be detained in Uttaranchal as the Special Judge can secure his attendance during the trial. The petitioner has claimed parity with one other person Sri Lakshmi Shanker. In case of relieving of Lakshmi Shanker, the State Government has committed a mistake and a mistake cannot be a ground of invoking the provisions of Article 14 of the Constitution of India.

7. So far as the securing of attendance of petitioner during trial by the Special Judge is concerned, it is something different than the availability of the petitioner in the State of Uttaranchal for proper investigation.

8. Learned counsel for the petitioner relied on two orders i.e. order dated 29.4.2003 by which the deputation of all the deputationists were cancelled and the letter issued by the Government of India requiring the deputationist to be sent back. On this basis, learned

counsel for the petitioner submitted that in view of these orders, the State Government of Uttaranchal was duty bound to relieve the petitioner for State of Uttar Pradesh.

9. In view of the facts noticed above it is clear that the petitioner was caught red handed and was suspended and detained in Jail and he was not released on regular bail rather he was released in a Habeas Corpus petition, which is still pending. Normally, in a Habeas Corpus petition, the petitioner is not released on bail as either the Habeas Corpus petition is finally dismissed or it is finally allowed. Be that it may but there is a release order in the Habeas Corpus Petition and that has got to be treated to be provisional one, therefore, the State of Uttaranchal rightly resisted not to relieve the petitioner and was not compelled to release him in terms of the interim order passed by this Court.

10. The aforesaid finding has been recorded by us in view of the special feature of the case but this will not affect the trial. However, since the petitioner has joined in the State of Uttar Pradesh in pursuance of the interim order passed by this Court, therefore the petition has been rendered infructuous and is dismissed as such.

(B.C.Kandpal, J.) **(P.C.Verma, J.)**

Rajeev Dang